



# Ethics News

Issue No. 47

Official Newsletter of the Indiana State Ethics Commission

May 2006

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## Changes to the State Code of Ethics

Public Law 89 which became effective March 17, 2006 ushered in changes to the State Code of Ethics and the Executive Branch Lobbying Rules.

Some of the changes concern the internal operating procedure of the Office of Inspector General and State Ethics Commission. Others are changes in the substantive ethics statutes. Below is a list of the ethics changes that affect state officers, employees, and special state appointees within the executive branch of state government.

Please note that the Executive Branch Lobbying Rules are promulgated by the Indiana Department of Administration. Should you have questions about changes to the Executive Branch Lobbying Rules, contact Jeff Gill, [jgill@idoa.state.in.us](mailto:jgill@idoa.state.in.us).

### Definitions (IC 4-2-6-1)

**“Advisory body”** means an authority, a board, a commission, a committee, a task force, or other body designated by any name of the executive department that is authorized only to make nonbinding recommendations.

**“Business relationship”** includes the following:

- (A) Dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:
  - (i) a pecuniary interest in a contract or purchase with the agency; or
  - (ii) a license or permit requiring the exercise of judgment or discretion by the agency.
- (B) The relationship a lobbyist has with an agency.
- (C) The relationship an unregistered lobbyist has with an agency.

The definition of “advisory body” was added because two of the ethics statutes (IC 4-2-6-7 and IC 4-2-6-11) exclude special state appointees who serve only as a member of an advisory body. IC 4-2-6-7 concerns selling or leasing any property which substantially exceeds that which the special state appointee would charge in the ordinary course of business; and accepting compensation from a person who has a business relationship with the agency. IC 4-2-6-11(b)(f), deals with post employment restrictions.

### Financial Disclosure Statements

The bill adds a new class of state employees and special state appointees who are required to file the annual Financial Disclosure Statement.

IC 4-2-6-8(a)(6) was added: “Any agency employee, special state appointee, former agency employee, or former special state appointee with final purchasing authority.”

The reference to former employees and special state appointees concerns the requirement that a person who files a Financial Disclosure Statement must file a statement “not later than thirty (30) days after leaving employment or office, unless the subsequent employment or office requires the filing of a statement under this section.” (IC 4-2-6-8(b)(4))

We anticipate that the term “final purchasing authority” will be defined by rule later this year. The first application of this statutory provision will be the filing of the 2006 Financial Disclosure Statement, due February 1, 2007.

### Outside Employment

Written advisory opinions concerning outside employment are now issued by the State Ethics Commission or the individual’s appointing authority or agency ethics officer. IC 4-2-6-5.5(b)

### Post Employment

The following post-employment restrictions no longer apply to a special state appointee who serves only as a member of an advisory body:

#### IC 4-2-6-11(b) . . . accepting employment or compensation

1. as an executive branch lobbyist
2. from an employer if the former state officer, employee, or special state appointee was:
  - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
  - (B) in a position to make a discretionary decision affecting
    - (i) the outcome of the negotiation; or
    - (ii) the nature of the administration; or
3. from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer before the elapse of at least three hundred sixty-five days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

A new subsection (h) was added to identify those special state appointees who were serving state government when the post employment restrictions became effective in January, 2005. Those special state appointees have been granted a window of time in which to resign their positions in state government without being subject to the post employment statute. The window closes on December 31, 2006.

Subsection (g) allows an employee's or special state appointee's state officer or appointing authority to waive the application of subsections (b) or (c) in individual cases when consistent with the public interest. The waivers must be in writing and filed with the Ethics Commission. Written advisory opinions on this statute are now issued by the State Ethics Commission. IC 4-2-6-11(e)

### Penalties

The final substantive change is found in the penalty statute, IC 4-2-6-12. The following penalties were added to the existing list of penalties that are available to the State Ethics Commission when an ethics statute or rule is violated:

1. Revoke a license or permit issued by an agency;
2. Bar a person from obtaining a license or permit issued by an agency;
3. Revoke the registration of a person registered as a lobbyist under IC 4-2-8; and
4. Bar a person from future lobbying activity with a state office or agency.

NOTE: The Indiana Code has not yet been updated with the 2006 Bills. Therefore, these changes are not, as yet, reflected on the Indiana General Assembly's Web site.

### Frequently Asked Questions

**Q.** When an employee leaves state government, can they go to work for a contractor who has a business relationship with their state agency?

**A.** Post employment restrictions do not apply to all state employees nor to special state appointees who only serve as members of an advisory body. If your job does not bring you within one of the statutory restrictions, then post employment with a contractor is not prohibited. If your job does bring you within one of the statutory restrictions, there is relief from the application of the statute in some instances. Your appointing authority can file a waiver of the statute with the State Ethics Commission if such a waiver is consistent with the public interest.

**Q.** My neighbor and I have been friends for several years and recently my neighbor has entered into a business relationship with my agency. Does this mean I can no longer accept gifts or lunches from my neighbor?

**A.** The gift rule excepts gifts from persons with whom the state employee or special state appointee has an ongoing social relationship. There are criteria for the application of the exception. The gift cannot be deducted by the friend as a business expense, and the donor cannot be attempting to influence the state employee in the employee's official capacity. We suggest that you notify your agency ethics officer of the situation. The ethics officer or agency head should file a gift waiver with the Ethics Commission, setting forth the facts to support the exception criteria. The waiver is not required by the rule, but it offers protection against a later allegation of rule violation.

**Q.** During a recent charitable fund-raising campaign, I was asked by a contractor who has a business relationship with my agency to make a financial contribution. Is this permissible?

**A.** The State Code of Ethics Gift Rule is a one-way rule. It prohibits employees and special state appointees from soliciting or accepting gifts from persons with a business relationship with the agency. However, the only prohibition pertaining to contractors is that they not offer gifts to state employees or special state appointees. There is no ethics violation against a contractor soliciting a donation from a state employee or special state appointee. However, there is a State Personnel Department policy against soliciting state employees on state time.

**Q.** Are there any restrictions on state employees in regards to giving political donations?

**A.** Basically, employees have a constitutional right to engage in political activity, which includes making campaign contributions. The state must have a compelling interest in limiting that right before any restriction will pass constitutional muster. The rule restriction applies to “soliciting” campaign contributions, not giving them. See political activity rule below.

### **42 IAC 1-5-4 Political activity**

#### **Sec. 1.**

A state employee or special state appointee shall not engage in political activity including solicitation of political contributions from: another employee or special state appointee; or any other person when on duty or acting in an official capacity.

This section does not prohibit a state employee or special state appointee from engaging in such activity when not on duty.

A state employee or special state appointee shall not solicit political contributions at any time from: persons whom the employee or special state appointee knows to have a business relationship with the employee's or the special state appointee's agency; or state employees or special state appointees directly supervised by the employee or the special state appointee.

The appointing authority of an agency and all employees or special state appointees with purchasing or procurement authority on behalf of the state shall not solicit political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself.

## Frequently Asked Questions

**Q.** I am making a speech next month at a trade association made up of vendors doing business with my agency. I have declined their offer of a payment for my speech since I will be acting in my official capacity. However, the association would like to give the honorarium to a charity of my choosing. Is this permissible under the honoraria rule?

**A.** A contribution to a third party in your name is considered a gift to you. Thus, we must use the gift-rule analysis to determine whether or not there is a violation.

The gift-rule analysis is a two-step process:

1. Does the donor of the gift have a business relationship with your agency? If no, and the gift is not offered for the performance of official state duties, then there is no gift rule violation.
2. If yes, the donor does have a business relationship with your agency, and the gift has greater than a “nominal” value, then there is a gift rule violation. The gift should be declined or returned.

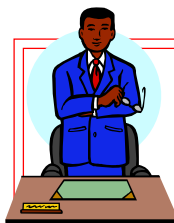
In this case, obviously the value of the gift is not “nominal.” Thus, the question is one of the relationship of the donor to your agency. If there is a business relationship, the contribution to the not-for-profit must not be made in your name.

In situations involving honoraria, even organizations that understand the gift rule think that a gift to a not-for-profit in the name of the speaker is an acceptable way of honoring the speaker without violating the gift rule. We use the “control” analysis to interpret this situation. If the employee accepts a donation made to any third party in the employee’s honor, the employee has exercised control of the gift. It is the exercise of the control of the gift that violates the gift rule.

Note: A state employee may accept an honorarium on behalf of the state. The payment goes to the general fund.

**Q.** What is ghost employment?

**A.** Ghost employment applies to a state officer, employee or special state appointee who engages in, or directs others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.



Please note: Advisory opinions may be found on the Commission’s Web site at <http://www.in.gov/ethics/advis/>.

If you have a question, which you would like answered, [click here](#).

### **2006 Ethics Training Schedule**

All classes are held in the State Conference Center (IGC South).  
402 W. Washington St.  
Indianapolis, IN 46204

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Please check the Conference Center Directory the day of class  
as rooms are subject to change.

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#### **Ethics Orientation 10:00- 11:00 a.m.**

July 18	Conference Center Room 14
September 12	Conference Center Room 14
November 14	Conference Center Room 17

#### **Ethics for Supervisors and Managers 10:00 - 11:30 a.m.**

July 12	Conference Center Room 4
September 27	Conference Center Room 4
November 15	Conference Center Room 4

#### **Ethics for Executives (Agency Heads, Ethics Officers, & Upper Management) 10:00 - 12:00**

June 15	Conference Center Room 18
October 17	Conference Center Room 18

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Any of the above classes count as orientation or refresher training. These classes  
also are offered online at:

[<http://www.in.gov/ethics/training/>.](http://www.in.gov/ethics/training/)

[Click here to register for a class.](#)

Call Mary Hill at 233-3767, if you would like on site training for your agency.

*If I have been of service, if I have glimpsed more of the nature  
and essence of ultimate good, if I am inspired to reach wider  
horizons of thought and action, if I am at peace with myself, it  
has been a successful day.*

— Alex Noble